

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:11-00142-01

SARGIS TADEVOSYAN

MEMORANDUM OPINION AND ORDER

Pending is defendant Sargis Tadevosyan's Motion To Correct the Record to Include the Grand Jury Transcripts Over the Government's Objection ("motion to supplement"), filed May 29, 2012. On June 1, 2012, the court received the United States' response. On June 6, 2012, the court's law clerk contacted Tony Mirvis and Assistant United States Attorney Meredith George Thomas. Mr. Mirvis is serving as counsel for defendant, along with A. Courtenay Craig and Rico R. Moore. Ms. George Thomas is serving as counsel for the United States, along with fellow Assistant United States Attorney Hunter P. Smith, Jr. The law clerk inquired whether defendant intended to reply to the government's response. Mr. Mirvis stated that no reply would be forthcoming.

Federal Rule of Appellate Procedure 10(e) provides in pertinent part as follows:

(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:

(A) on stipulation of the parties;

(B) by the district court before or after the record has been forwarded; or

(C) by the court of appeals.

Fed. R. App. Proc. 10(e)(2).

Defendant's motion sets forth the background respecting the materials that he wishes to be added to the record:

10. The Government provided the Appellant with the Grand Jury transcripts at issue on or about September 12, 2011.

11. The Grand Jury transcripts were provided to the undersigned both by electronic mail as well as on a compact disk.

12. The Government filed a document entitled "Third Supplemental Response of the United States of America to Defendants' Standard Discovery Request and Request of the United States for Reciprocal Discovery" on September 16, 2012.

13. The Government's Second Supplemental Discovery Response references a spreadsheet provided on the discovery disk, which includes the Grand Jury minutes at issue.

14. The Government provided Appellant with the Grand Jury minutes pursuant to an Order issued on September 12, 2011 by the Honorable District Court Judge John T. Copenhagen, Jr. (Exhibit "J")

15. The Order provided that the disclosure of the Grand Jury minutes are subject to the provisions of Rule 6(e) of the Federal Rules of Criminal Procedure and "shall be used only in the preparation of the defense."

16. Appellant submits that the inclusion of the Grand Jury minutes in the Appendix and reference to the Grand Jury minutes in the Brief are necessary for the Defendant to prosecute his appeal.

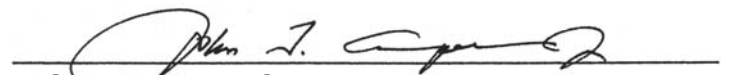
(Mot. at 3-4 (footnote and citations omitted)).

As is apparent from the body of Rule 10(e)(2), the movant is obliged to demonstrate that the documents offered for record supplementation are both (1) material, and (2) omitted from or misstated in the record by error or accident. Defendant has satisfied neither requirement. Foremost, his motion gives no indication why the grand jury materials are necessary, or even helpful, in prosecuting his appeal. Absent this fundamental showing, the court is unauthorized by Rule 10(e)(2)(B) to modify the appellate record.

The court, accordingly, ORDERS that the motion to supplement be, and it hereby is, denied.

The Clerk is directed to forward copies of this order to the defendant and all counsel of record.

DATED: June 6, 2012


John T. Copenhaver, Jr.
United States District Judge